

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FRESENIUS KABI USA, LLC,

Plaintiff,

vs.

STATE OF NEBRASKA; THE NEBRASKA
DEPARTMENT OF CORRECTIONAL
SERVICES; and SCOTT FRAKES, in his
Official Capacity as Director of the
Nebraska Department of Correctional
Services,

Defendants.

CASE NO. 18-cv-3109

MOTION FOR PRELIMINARY
INJUNCTION

COMES NOW Plaintiff, Fresenius Kabi USA, LLC ("Fresenius Kabi"), by and through its counsel of record, and moves this Court for a preliminary injunction pursuant to Federal Rule of Civil Procedure 65, restraining and enjoining the Defendants, or Defendants' agents, servants, employees, representatives, or any person in active concert or participation with Defendants:

- From using any product manufactured by Fresenius Kabi, including Potassium Chloride (KCL) and Cisatracurium Besylate ("Cisatracurium"), in administering its lethal-injection protocol for the execution of Carey Dean Moore, or any other execution of a human being;
- To impound those items of inventory identified by the Court as having been manufactured by Fresenius Kabi until such time as the merits of this dispute are finally resolved.

In support of said motion, and as set forth in Fresenius Kabi's verified Complaint, attached exhibits, and affidavits attached hereto, Fresenius Kabi states as follows:

1. Fresenius Kabi is threatened with irreparable harm and has no adequate remedy at law with which to address that harm;

2. The Defendants will suffer no injury from the injunction sought as they may carry out their executions by other means or with the products of other suppliers;

3. Fresenius Kabi has a fair chance of success on the merits of this dispute; and

4. The public has a strong interest in the availability of KCL and Cisatracurium for medically legitimate and federally approved uses.


WHEREFORE, Fresenius Kabi prays for a preliminary injunction restraining and enjoining the State of Nebraska, the Nebraska Department of Correctional Services, and Scott Frakes, and their agents, servants, employees, representatives, or any person in active concert or participation with the Defendants, consistent with the term described herein.

Fresenius Kabi requests oral argument on this motion for the reason that seeks immediate injunctive relief and believes an opportunity to present its reason for the request will be the most expeditious manner to receive a ruling from this Court. Fresenius Kabi requests one hour for the hearing.

DATED this 8th day of August, 2018.

FRESENIUS KABI USA, LLC,
Plaintiff

By: James M. Bausch #10236
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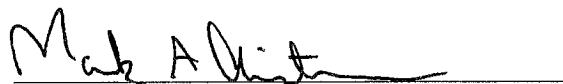
CERTIFICATE OF SERVICE

I, Mark A. Christensen, hereby certify that on this 8th day of August, 2018, I electronically filed the foregoing document with the Clerk of the United States District Court using the CM/ECF system, which sent notification of such filing to the following:

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Mark A. Christensen